

ORIGINAL

## IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

-vs-

RICHARD BOHANNON,

Defendant-Appellant.

SUPREME COURT NO.

( By Clerk)

Hamilton App.No C-990386

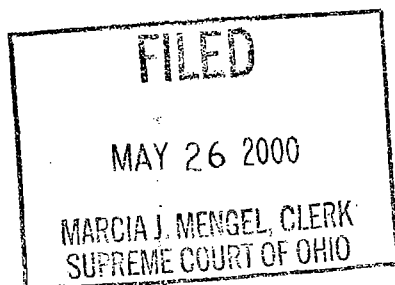
Hamilton C.P. No.B-9808141(A)

00-998

MOTION FOR LEAVE TO FILE DELAYED APPEAL

Comes now Defendant-Appellant, Richard Bohannon, Pro Se, and moves this Honorable Supreme Court of Ohio for leave to file his delayed appeal from the judgment entered by the Hamilton County Court of Appeals, First Appellate District of Ohio on March 1, 2000. For cause, Appellant submits that he inadvertently mailed his notice of appeal and supporting memorandum in support of claimed jurisdiction to the Hamilton County Court of Appeals on or about April 11, 2000.

IT IS SO PRAYED FOR



Respectfully submitted,

Richard Bohannon-Appellant  
Reg. # 374-617 Unit 2-K-48  
Lebanon Correctional Institution  
P.O. Box 56  
Lebanon, Ohio 45036



AFFIDAVIT IN SUPPORT OF MOTION FOR DELAYED APPEAL

I, Richard Bohannon, after first being duly sworn according to law do hereby depose as follows:

1. That I am the Appellant-Affiant herein and as such stand qualified to attest to the contents herein because of personal knowledge.
2. That on or about April 11, 2000, I inadvertently mailed my notice of appeal with memorandum in support of claimed jurisdiction to the Hamilton County, Ohio Court of Appeals.
3. That because of this inadvertent error, I am now past the 45 day time limit to file same in this Supreme Court of Ohio.
4. That pursuant to the Rules of Practice of the Ohio Supreme Court & Ohio Civil Rule 60(B) leave to file this delayed appeal should be well-taken.
5. That all the foregoing averments are true as I verily believe.

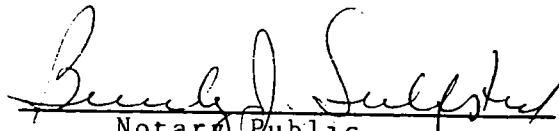
FURTHER AFFIANT SAYETH NAUGHT

  
Affiant

STATE OF OHIO }  
COUNTY OF WARREN } SS:

SWORN AND SUBSCRIBED TO IN MY PRESENCE A NOTARY PUBLIC

THIS 20<sup>th</sup> DAY OF APRIL, 2000.

  
Notary Public



BEVERLY J. SULSTED  
Notary Public, State of Ohio  
My Comm. Expires April 14, 2000- 2005

Certificate of Service

This is to certify that a copy of the foregoing motion for delayed appeal was serve upon Michael K. Allen, Hamilton County Prosecutor at 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202 by regular mail service this 11th day of April, 2000.



Richard Bohannon-Defendant-Appellant  
Reg. # 374-617 Unit 2-K-48  
Lebanon Correctional Institution  
P.O. Box 56  
Lebanon, Ohio 45036

# IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

STATE OF OHIO,

APPEAL NO. C-990386

TRIAL NO. B-9808141(A)

Plaintiff-Appellee,

*JUDGMENT ENTRY.*

vs.

RICHARD BOHANNON,

Defendant-Appellant.

This appeal, considered on the accelerated calendar under App.R. 11.1(E) and Loc.R. 12, is not controlling authority except as provided in S.Ct.R.Rep.Op. 2(G)(1).

Defendant-appellant, Richard Bohannon, was tried by a jury, found guilty, and convicted for burglary, misuse of a credit card, and receiving stolen property. Bohannon claims that his conviction violated his right to confront witnesses and was against the manifest weight and sufficiency of the evidence. Bohannon also claims that he was denied effective assistance of counsel. We disagree.

The Confrontation Clause ensures that no one will be convicted without being given the opportunity to confront and cross-examine witnesses at trial. *State v. Gilliam* (1994), 70 Ohio St.3d 17, 635 N.E.2d 1242, citing *Lee v. Illinois* (1986), 476 U.S. 530, 106 S.Ct. 2056. When the state seeks to introduce a nontestifying accomplice's statement, it no longer may be admitted as evidence of guilt of the defendant if it falls within a firmly rooted hearsay exception. See *State v. Madrigal* (2000), 87 Ohio St.3d 378, 386, 721 N.E.2d 52, 62, overruling the contrary holding in *State v.*

*Gilliam, supra*. To overcome a violation of the Confrontation Clause, the statement must bear adequate indicia of reliability or be supported by a particularized guarantee of trustworthiness. See *Madrigal* at 386, 721 N.E.2d at 62; see, also, *Lilly v. Virginia* (1999), 527 U.S. 116, 119 S.Ct. 1887. But even if such a statement is erroneously admitted, this court need not reverse the conviction if the admission of the statement is harmless. See *Lilly, supra*; *Madrigal, supra*.

In this case, we hold that Bohannon's Confrontation Clause rights were violated because, pursuant to *Lilly*, a nontestifying accomplice's statement that tends to shift blame to others is inherently unreliable and does not bear adequate indicia of reliability. See *Lilly, supra*; *Madrigal, supra*. Despite this, we hold – based upon the overwhelming evidence of guilt aside from the erroneously admitted statement, including Bohannon's incriminating statement made to the arresting officer – that the admission of the nontestifying accomplice's statement was harmless. See *Chapman v. California* (1967), 386 U.S. 18, 87 S.Ct. 824; *Delaware v. Van Arsdall* (1986), 475 U.S. 673, 106 S.Ct. 1431; *Schneble v. Florida* (1972), 405 U.S. 427, 92 S.Ct. 1056; *Madrigal, supra*. Therefore, we overrule Bohannon's first assignment of error.

Bohannon claims, in his second assignment of error, that he was denied effective assistance of counsel. In order to demonstrate ineffective assistance of counsel, Bohannon must show that, but for counsel's unprofessional errors, the outcome of the trial would have been different. See *State v. Stojetz* (1999), 84 Ohio St.3d 452, 705 N.E.2d 329, citing *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052. Bohannon cites as ineffective assistance his counsel's failure to call a witness who may have been able to impeach the credibility of the erroneously admitted statement of the nontestifying accomplice. Bohannon and his counsel discussed this issue at length on the record. The court asked Bohannon whom he wanted to call as witnesses in addition to those listed on the defense witness list. Bohannon stated that there were two individuals who would testify that Bohannon's accomplices knew one another. The state stipulated to the testimony of Bohannon's proposed witnesses, and the case proceeded without further objection from Bohannon. We hold that Bohannon has failed to demonstrate that counsel's actions were ineffective. We, therefore, overrule Bohannon's second assignment of error.

In Bohannon's third assignment of error, he claims that his conviction was contrary to the manifest weight of the evidence and was based upon insufficient evidence. Sufficiency and weight of the evidence are separate concepts that may lead to different results. If a conviction is not based upon sufficient evidence, then the defendant must be set free because the state has not met its burden to produce evidence to satisfy each and every element of the charged offense. See *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. Conversely, if the conviction is contrary to the manifest weight of the evidence, then the defendant is entitled to a new trial because, although there is sufficient evidence to meet the elements of the charged offense, the burden of persuasion to support a conviction beyond a reasonable doubt has not been met. See *id.* If we determine that there is substantial evidence to support all of the elements of the charged offense and that the evidence is sufficiently probative of guilt, we will not reverse on either the sufficiency or the weight of the evidence. See *State v. Barnes* (1986), 25 Ohio St.3d 203, 495 N.E.2d 922; *Thompkins, supra*.

The record in this case demonstrates that Bohannon, by his own admission, was the driver of a vehicle that carried two other individuals, one of whom burglarized two locations. Evidence was presented that tied Bohannon's car to one of the burglaries via his license-plate number. Additionally, witnesses testified that they recognized Bohannon's coat, which had been worn by the accomplice who committed the burglary. Thus, based upon complicitor liability, Bohannon was guilty of burglary. As to the offense of misuse of a credit card, Bohannon's license-plate number was tied to

the purchase of gasoline and other merchandise. Finally, the police recovered stolen watches from Bohannon's car. Testimony was presented that the watches belonged to one of the victims. Thus, the charge of receiving stolen property was properly supported by the evidence. Based upon the overwhelming evidence of guilt – aside from the erroneously admitted statement of the nontestifying accomplice – we hold both that there was substantial evidence to satisfy the elements of the charged offenses, and that the evidence was sufficiently probative of guilt beyond a reasonable doubt. Therefore, we overrule Bohannon's third assignment of error.

Having overruled all of Bohannon's assignments of error, we affirm the judgment of the trial court.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**Hildebrandt, P.J., Sundermann and Winkler, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on March 1, 2000

per order of the Court \_\_\_\_\_

Presiding Judge

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

GREGORY HARTMANN  
CLERK OF COURTS  
HAMILTON COUNTY, OH

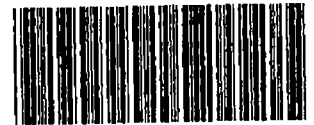
2004 APR -5 A 11:57

STATE OF OHIO, :  
Plaintiff-Respondent, : CASE NO. B-9808141 (A) **FILED**  
-vs- : **JUDGE MARTIN**  
RICHARD BOHANNON, : REQUEST FOR EVIDENTIARY HEARING  
Defendant-Petitioner. :

PETITION TO VACATE OR SET ASIDE JUDGMENT OF  
CONVICTION OR SENTENCE

Petitioner, Richard Bohannon, petitions this Court for post-conviction relief pursuant to Ohio Revised Code 2953.21, for the following reasons:

1. Petitioner was indicted for Aggravated Burglary, Burglary, Misuse of Credit Cards, and Complicity.
2. Petitioner was convicted of Burglary, Misuse of Credit Cards, and Complicity, in a judgment entered on May 20, 1999.
3. Petitioner was tried by a Jury.
4. Petitioner was given a sentence of 15 1/2 years of incarceration.
5. Petitioner did appeal from the judgment of conviction to the First Appellate District Court of Appeals, the Court of appeals rendered and affirmed the trial Court decision on March 1, 2000.
6. Petitioner appealed the decision of the First Appellate District Court of Appeals to the Ohio Supreme Court of Ohio, resulting in its dismissal on July 12, 2000, with written opinion.
7. Petitioner suffered a denial or infringement of Petitioner's rights sufficient to rendered the judgment of conviction void or voidable under the Ohio Constitution and/or the Constitution of the United States.
8. The Constitutional errors that entitled Petitioner to relief are not included in the record and could not have been raised on appeal.



D58594383

PENGAD-Bayonne, N. J.

**B**

CLAIM NUMBER ONE


- 9a. STATEMENT OF CONSTITUTIONAL CLAIM: Newly Discovered Evidence.
- 9b. STATEMENT OF FACTS SUPPORTING CLAIM: The Prosecution withheld Exculpatory Evidence (INTERVIEW "TAPE" CONFESSION OF ALLEGED CO-DEFENDANT(s) STATEMENTS) exonerating Petitioner of any involvement and/or complicity to the case at hand.
- 9c. The following evidence and/or affidavit are not attached because Petitioner needs the assistance of an attorney to produce the evidence.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests:

- A. That this Court adopt the Recommendation of the United States District Court;
- B. That Petitioner be granted an evidentiary hearing on the above claim;
- C. That Petitioner's conviction be vacated or set aside; and/or
- D. That Petitioner be granted such other relief as the Court deems appropriate.

Respectfully submitted,

  
Richard Bohannon #374-617  
Lebanon Correctional Institution  
P.O. Box 56  
Lebanon, Ohio 45036

DEFENDANT-PETITIONER, pro se



IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

STATE OF OHIO, :  
Plaintiff-Respondent, :  
-vs- : CASE NO. B-9808141 (A)  
RICHARD BOHANNON, :  
Defendant-Petitioner. :

AFFIDAVIT OF INDIGENCY

I, Richard Bohannon, do hereby solemnly swear that I have presently this 24th day of March, 2004, no means of financial support and no assets of any value and, therefore, cannot afford to pay for any legal services, fees or costs in the above-styled case.

Richard Bohannon  
DEFENDANT-PETITIONER, pro se

Lebanon Correctional Institution  
P.O. Box 56  
Lebanon, Ohio 45036

SWORN TO AND SUBSCRIBED IN MY PRESENCE THIS 24th DAY OF MARCH,  
2004.

Billy Dee Bailey  
NOTARY PUBLIC

BILLY DEE BAILEY  
Notary Public, State of Ohio  
My Commission Expires Mar. 27, 2005

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

STATE OF OHIO, :  
Plaintiff-Respondent, :  
-vs- : CASE NO. B-9808141 (A)  
RICHARD BOHANNON, :  
Defendant-Petitioner. :

MOTION FOR APPOINTMENT OF COUNSEL

Petitioner moves this Court for an order appointing counsel  
to represent petitioner on the Petition for Post-Conviction Relief.  
A memorandum in support is attached.

Respectfully submitted,



Richard Bohannon #374-617  
Lebanon Correctional Institution  
P.O. Box 56  
Lebanon, Ohio 45036

PETITIONER, pro se

MEMORANDUM IN SUPPORT

Petitioner lacks the skill or knowledge to adequately pursue Petitioner's rights without the assistance of counsel. Counsel is essential to insure that Petitioner's rights are fully litigated and all issues reviewed. Pursuant to Ohio Revised Code §2953.21, Petitioner has only one opportunity to present his claim for post-conviction relief.

Counsel is required to protect Petitioner's constitutional rights.

As attested by the Affidavit of Indigency filed with the Petition, Petitioner is without funds to hire an attorney.

The following special circumstances about Petitioner and/or Petitioner's case further support this request: The State's Prosecuting Attorney in this case withheld "Exculpatory Evidence", which would have exonerated Petitioner of any involvement in the above-styled case, which stated by the alleged co-defendant(s); "that the Petitioner had nothing to do with the case at present," however, this evidence was kept from the trial which violated Petitioner's rights to have any and all evidence favorable to the Petitioner.

WHEREFORE, Petitioner respectfully requests that counsel be appointed.

Respectfully submitted,



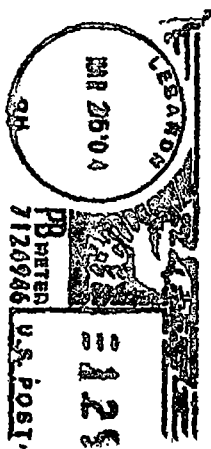
PETITIONER, pro se

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing MOTION FOR APPOINTMENT OF COUNSEL was sent by regular U.S. mail to the Office of the Hamilton County Prosecutor, at 230 East Ninth Street, Cincinnati, Ohio 45202, this 24 day of March, 2004.

  
DEFENDANT-PETITIONER, pro se

HARD BOHANNON # 374-617  
ANDON CORRECTIONAL INSTITUTION  
BOX 56  
ANDON, OHIO 45036



**THE STATE OF OHIO, HAMILTON COUNTY**

**COURT OF COMMON PLEAS**

GREGORY HARTMANN  
CLERK OF COURTS  
HAMILTON COUNTY, OH

2004 APR 29 A 10:33

**STATE OF OHIO**

Plaintiff-Respondent

vs.

**RICHARD BOHANNON**

Defendant-Petitioner

**NO. B-9808141(A)**

(Judge Martin)

**MEMORANDUM IN OPPOSITION  
TO PETITION TO VACATE**

**FILED**

Defendant was found guilty of two counts of burglary and misuse of a credit card. Defendant was sentenced on May 21, 1999. Defendant was sentenced to seven years incarceration for both burglary convictions and seventeen months incarceration for misuse of a credit card. Defendant's conviction and sentence were upheld by the First District Court of Appeals. The judgment affirming the trial court's entry was entered on March 1, 2000.

On April 5, 2004, defendant filed a petition to vacate or set aside judgment of conviction or sentence.

Defendant claims the following:

- (1) newly discovered evidence,  
and (2) misconduct by the trial court and prosecutor.

Defendant's claims could have been raised at trial, sentencing, or on appeal. Accordingly, the doctrine of res judicata bars defendant-petitioner from raising these claims in his post-conviction proceeding.<sup>1</sup>

<sup>1</sup> State v. Perry (1967), 10 Ohio St.2d 175, 22 N.E.2d 140.



D58922883

PENGAD-Bayonne, N. J.

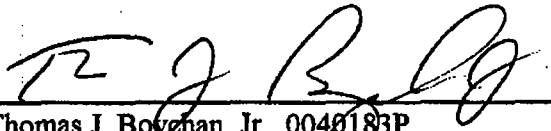
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Further, defendant has failed to provide proper evidentiary documentation as required by State v. Pankey<sup>2</sup> to support his claims.

For the above reasons, defendant-petitioner's claim is properly rejected.

Respectfully submitted,

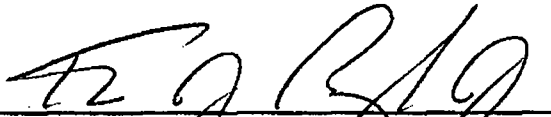
Michael K. Allen, 0025214P  
Prosecuting Attorney



Thomas J. Boychan, Jr., 0040183P  
Assistant Prosecuting Attorney  
230 East Ninth Street, Suite 4000  
Cincinnati, Ohio 45202  
513/946-3158

CERTIFICATE OF SERVICE

I hereby certify that on this 28 day of April, 2004, I have enclosed a copy of the foregoing document to counsel for the defendant by posting same in the United States mail addressed to Richard Bohannon, Pro se, Inmate # 374-617, Lebanon Correctional Institution, P.O. Box 56, Lebanon, Ohio 45036.



Thomas J. Boychan, Jr., 0040183P  
Assistant Prosecuting Attorney

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<sup>2</sup> (1981), 68 Ohio St.2d 58, 428 N.E.2d 413

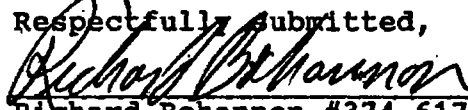
IN THE COURT OF COMMON PLEAS  
FOR HAMILTON COUNTY, OHIO

GREGORY HARTMANN  
CLERK OF COURTS  
HAMILTON COUNTY, OH

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STATE OF OHIO, : NO. B-9808141(A)  
Plaintiff-Respondent, : (Judge Martin) **FILED**  
-vs- : MEMORANDUM IN OPPOSITION  
RICHARD BOHANNON, : TO PLAINTIFF'S RESPONSE  
Defendant-Petitioner. :

Now comes Defendant-Petitioner, Richard Bohannon, Pro Se, herein in Opposition to the Plaintiff's Response filed on April 23, 2004, respectfully seeks to oppose to the findings filed by the Plaintiff, hereinafter, (Assistant Prosecutor). Defendant-Petitioner submits his Memorandum In Opposition in memorandum attached.

Respectfully submitted,  
  
Richard Bohannon #374-617  
Lebanon Correctional Institution  
P.O. Box 56  
Lebanon, Ohio 45036

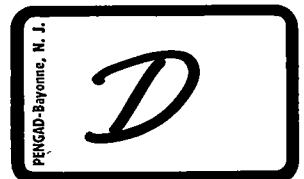
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing motion was sent by regular U.S. mail to the Hamilton County Prosecutor's Office, at 230 East Ninth Street, Suite 4000, this 3 day of May, 2004.

  
DEFENDANT-PETITIONER



D59098291





**MEMORANDUM IN OPPOSITION TO**  
**PLAINTIFF'S RESPONSE**

As attested to by the Plaintiff-Respondent, Defendant sought to file a petition to vacate or set aside his judgment of conviction based upon "Newly Discovered Evidence", and as a result, the Plaintiff filed with this Court, Memorandum In Opposition citing that this claim is barred by 'res judicata'. The Defendant rejects the assertions stated in Plaintiff's Opposition, because it calls into question the validity of the journal entry filed by the Trial Court. See; Attached Exhibit #1

However, the plaintiff states that this claim, (Newly Discovered Evidence), is barred by res judicata due to it was not raised in any proceeding, whether during trial, sentencing, or on appeal, however, res judicata was no bar because Defendant-Petitioner claim had not been previously adjudicated by this Court, nor the Court of Appeals, and could not have been pursuant to State v. Perry, (1967), 10 Ohio St.2d 175, unless it can be found that the Defendant was required to take over the trial process while the case was pending in this Court or the Court of Appeals, and argue his trial and appellate counsel's ineffectiveness, or that such counsel during trial or on appeal was required to argue his/her own ineffectiveness before the Courts. See State v. Carter, (1973), 36 Ohio misc., 170, 304 N.E.2d 415 (CP). Secondly, what is presumably barred by res judicata, is the fact that during the Appellate stage, Counsel appointed, raised errors reflecting the mandates of State v. Gilliam, (1994), 70 Ohio St.3d 17, 635 N.E.2d 1242, (Hearsay Testimony), in which the Defendant was not allowed to confront the co-defendant's in this case, even to the extent that they were cited as hostile witnesses and/or pled the 5th, to remain silent or

against self-incrimination; not what the Plaintiff contends, when he suggested that this 'Newly Discovered Evidence' is barred by res-judicata, or on the other hand, the Plaintiff is misleading in his Opposition to this Court, and if allowed to stand would add to the manifested injustice already endured by the Defendant.

Wherefore, the Defendant-Petitioner submits that the assertions filed by the Plaintiff in this case has no basis and has zero reliability, as the record(s) do not reflect the same. As a result of this, seeks to vacate and/or set aside based upon the newly discovered evidence filed on April 5, 2004, due to the fact that the Hamilton County Prosecutor assigned to this case deliberately withheld evidence favorable to the Defendant by way of "initial Statements made by the co-defendants in this case." With the help of Trial Counsel (Mr. Welsh). It is the Defendant's contentions that he seeks of this Honorable Court to vacate or set aside his conviction based upon the allegation asserted in the above memorandum.

Respectfully submitted,



Richard Bohannon #374-617  
Lebanon Correctional Institution  
P.O. Box 56  
Lebanon, Ohio 45036

#### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum In Opposition, was sent to the Hamilton County Prosecutor's Office, at 230 East Ninth Street, Suite 4000, by regular U.S. mail service, this 3 day of May, 2004.



Richard Bohannon #374-617  
DEFENDANT-PETITIONER, PRO SE

THE STATE OF OHIO, HAMILTON COUNTY  
COURT OF COMMON PLEAS

date: 05/21/99

code: GJEI

judge: 207

Entered
Date: 5-21-99
Image: 274

  
Judge: STEVEN E MARTIN

NO: B 9808141-A

STATE OF OHIO  
VS.  
RICHARD BOHANON

JUDGMENT ENTRY: SENTENCE:  
INCARCERATION

Defendant was present in open Court with Counsel WILLIAM M WELSH on the 21st day of May 1999 for sentence.

The court informed the defendant that, as the defendant well knew, after defendant entering a plea of not guilty and after trial by jury, the defendant has been found guilty of the offense(s) of:

count 1: BURGLARY, 2911-12A1/ORCN,F2

count 2: MISUSE CREDIT CARD-EXP,REV, 2913-21B2/ORCN,F5

count 4: BURGLARY, 2911-12A1/ORCN,F2

count 9: RECEIVING STOLEN PROPERTY, 2913-51A/ORCN,M1

count 3: AGG BURGLARY W/SPECS, 2911-11A2/ORCN, ACQUITTAL

count 5: AGG BURGLARY W/SPECS, 2911-11A2/ORCN, DISMISSAL

count 6: BURGLARY, 2911-12A1/ORCN, DISMISSAL

SPECIFICATION TO COUNT 9, ACQUITTAL

The Court afforded defendant's counsel an opportunity to speak on behalf of the defendant. The Court addressed the defendant personally and asked if the defendant wished to make a statement in the defendant's behalf, or present any information in mitigation of punishment.

Defendant is sentenced to be imprisoned as follows:

count 1: CONFINEMENT: 7 Yrs DEPARTMENT OF CORRECTIONS

count 2: CONFINEMENT: 17 Mos DEPARTMENT OF CORRECTIONS

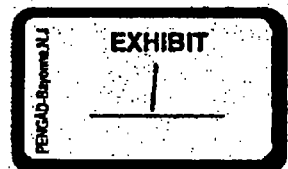
count 4: CONFINEMENT: 7 Yrs DEPARTMENT OF CORRECTIONS

count 9: CONFINEMENT: 6 Mos HAMILTON COUNTY JUSTICE CENTER

CONCURRENT WITH COUNTS 1, 2 & 4.

COUNTS 1, 2 & 4 ARE TO RUN CONSECUTIVE TO EACH OTHER. COUNT 9 TO RUN CONCURRENT. PAY COURT COSTS. CREDIT GIVEN FOR 191 DAYS.

Parent Case Id: 7954822

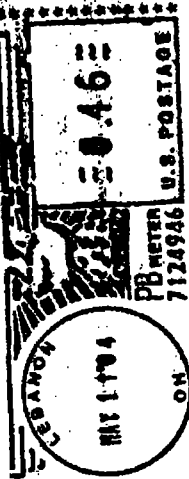


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RICHARD BOHANNON #374-617  
LEBANON CORRECTIONAL INST  
P.O. BOX 56  
LEBANON, OHIO 45036

LEBANON OH 45036



HAMILTON COUNTY COURT OF COMMON PLEAS  
1000 EAST MAIN STREET  
CINCINNATI, OHIO 45202

45036/0056

**THE STATE OF OHIO, HAMILTON COUNTY**  
**COURT OF COMMON PLEAS**  
**CRIMINAL DIVISION**

<b>STATE OF OHIO</b>	:	<b>NO. B-9808141(A)</b>
Plaintiff	:	(Judge Martin)
vs.	:	<b><u>FINDINGS OF FACT,</u></b>
<b>RICHARD BOHANNON</b>	:	<b><u>CONCLUSIONS OF LAW,</u></b>
Defendant	:	<b><u>ENTRY DENYING PETITION TO</u></b>
		<b><u>VACATE</u></b>

This matter is before the Court on the petition to vacate filed by the defendant, the response filed by the State, and the entire record in this matter. The Court determines that all questions raised can be resolved from the existing record, therefore, no evidentiary hearing will be held.

The Court makes the following Findings of Fact:

1. Defendant claims prosecutorial misconduct and newly discovered evidence.
2. Defendant's claims are based on matters in the record.

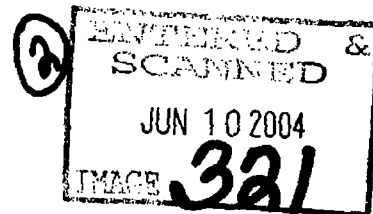
Based upon the above Findings of Fact the Court makes the following Conclusions of Law:

1. Defendant's claim could have been raised at trial, sentence, or on appeal, and are therefore barred by res judicata.<sup>1</sup>
2. Defendant's claim is not supported by evidentiary documents as required by State v. Pankey<sup>2</sup>.

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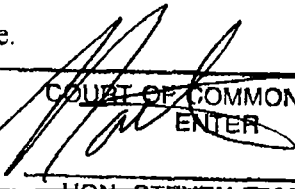
<sup>1</sup> State v. Perry (1967), 10 Ohio St.2d 175.

<sup>2</sup> (1981), 68 Ohio St.2d 58, 428 N.E.2d 413



3. Claims based on newly discovered evidence are not justifiable in a post conviction action.<sup>3</sup>

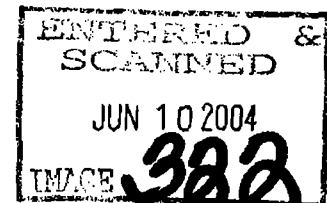
Based upon the above Findings of Fact and Conclusions of Law, and pursuant to R.C. 2953.21(C), the Court hereby dismisses the petition to vacate.

  
COURT OF COMMON PLEAS  
ENTER  
HON. STEVEN E. MARTIN  
Steven E. Martin  
Judge, Court of Common Pleas  
THE CLERK SHALL SERVE NOTICE  
OF THIS ORDER TO THE  
PARTIES AND SHALL  
FILE A RETURN WITHIN  
10 DAYS OF THE DATE  
OF ENTRY.

Counsel:

Thomas J. Boychan, Jr. (0040183P)  
Assistant Prosecuting Attorney  
230 E. Ninth Street, Suite 4000  
Cincinnati, Ohio 45202

Richard Bohannon #374-617  
Lebanon Correctional Institution  
P.O. Box 56  
Lebanon, Ohio 45036



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<sup>3</sup> State v. Clay (March 8, 1983), Hamilton App. No. C-820434, unreported.

IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT  
HAMILTON COUNTY, OHIO



D61091945

STATE OF OHIO, : Appeal No. C-040415  
Respondent/Appellee, : C-990386  
vs. : Trial No. B-9808141(A)  
RICHARD BOHANNON, :  
Petitioner/Appellant. :

\* \* \* \* \*

BRIEF OF PETITIONER/APPELLANT

\* \* \* \* \*

Richard Bohannon, pro se  
P.O.Box 5500  
Chillicothe, Ohio 45601

For Petitioner/Appellant

Michael K. Allen,  
Prosecuting Attorney  
230 Ninth Street, Suite 4000  
Cincinnati, Ohio 45202

Counsel for Respondent/Appellee

**FILED**  
**COURT OF APPEALS**

OCT 18 2004

GREGORY HARTMANN  
CLERK OF COURTS  
HAMILTON COUNTY

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Appellant's conviction was affirmed on March 1, 2000. This court's judgment entry overruled Appellant's assignment of errors concerning the Confrontation Clause on the basis of harmless error. Appellant's second assignment of error concerning ineffective assistance of trial counsel was overruled on the basis that trial counsel's performances was not proved to have fallen below an objective standard of reasonable representation and that no prejudice to Appellant was shown to have arisen from trial counsel's performance. Likewise, Appellant's third assignment of error concerning his conviction was against the manifest weight and sufficiency of the evidence was overruled because the court ruled that "there was substantial evidence to satisfy the elements of the charged offenses, and that the evidence was sufficiently probative of guilt beyond a reasonable doubt". Accordingly, the judgment of the trial court was affirmed. (See, Judgement Entry attached in Appendix "A").

Appellant next sought leave to file a delayed appeal to the Ohio Supreme Court. In his Memorandum in Support of Jurisdiction, he raised the same issues he had raised on direct appeal. On July 12, 2000, The Ohio Supreme Court issued an Entry denying Appellant's motion for delayed appeal and dismissing the appeal without opinion.

On July 16, 2001, Appellant filed a petition for writ of habeas corpus into the United States District Court, for the Southern District of Ohio, Western Division. In his petition he alleged the following grounds for relief:



**Ground One: Newly discovered evidence**

**Supporting Facts:** Prosecution withheld a tape recording statement made by a co-defendant that would have exonerated the petitioner. This was not discovered until after the petitioner was convicted and all appeals were filed.

**Ground Two:** The trial court erred when it allowed hearsay testimony of multiple co-defendants.

**Supporting Facts:** The trial court allowed written statements to be used against the petitioner, when the state's witnesses took the Fifth and cited their rights against self-incrimination

**Ground Three: Ineffective assistance of counsel**

**Supporting Facts:** Counsel failed to investigate or call witnesses to prove the state's witnesses were not telling the truth, denying the petitioner his rights guaranteed by the 6th and 14th Amendments to the U.S. Constitution.

**Ground Four:** The trial court erred when it allowed the petitioner to be convicted when the evidence was against the manifest weight of the evidence.

**Supporting Facts:** The trial court overruled petitioner's motion, Rule 29, when the evidence did not support a finding of guilt.

On March 18, 2004, the District Court issued its Report and Recommendation. The court found that Appellant had not exhausted his available state post-conviction remedy with respect to the "newly discovered evidence" claim alleged in Ground One of the petition. Therefore, the court stayed the habeas corpus petition, and ordered Appellant to pursue his state post-conviction remedy.

In compliance with the District Court's Report and Recommendation, Appellant filed a pro se Petition to Vacate pursuant to R.C. 2953.21 to 2953.23 et. seq. In support of his

motion, Appellant submitted the interrogation notes of Police Officer Middendorf. These are notes that Officer Middendorf wrote down after interrogating co-defendants Charles Johnson and Abdula Salalinddin. (See, Petition to Vacate attached to Appendix "B").

In response to Appellant's petition, the State of Ohio filed a Memorandum in Opposition to Petition to vacate. In its motion, the State submitted no evidence to contradict Defendant/Appellant's claims.

Without conducting an evidentiary hearing, Judge Martin denied Appellant's petition to Vacate. (See, Entry denying Petition to Vacate attached to Appendix "C"). The court made the following conclusion of law in its entry:

1. Defendant's claims could have been raised at trial sentence, or on appeal and therefore barred by res judicata.
2. Defendant's claim is not supported by documents as required by State v. Pankey.
3. Claims based on newly discovered evidence are not justifiable in post conviction action.

Shortly thereafter, Appellant timely filed a Notice of Appeal from Judge Martin's decision and this appeal was assigned Case Number C-040415, and these proceedings ensued.

## 2. Statement of the Facts

Although there was no evidentiary hearing on Appellant's Petition to vacate and thus no record of that proceeding, Appellant attached to his Petition to Vacate the interrogation

notes of Officer Middendorf as a means of presenting evidence to the court in his Petition. These interrogation notes are appended to Appellant's Petition to Vacate. (See, Appendix B).

These notes summarize the statements co-defendants Charles Johnson and Adula Salahuddin made to Officer Middendorf during interrroation. Both Johnson's and Salahuddin's statements contradict the State's theory of "complicitor liability", and the tape recorded confession played in court. Johnson's notes reveals that the stolen watches from the Mount Saint Joseph College robbery was recovered from him (Johnson). This is a critical point because in affirming Appellant's conviction for stolen property, this court said that the watches were recovered from Appellant's car. (See, Judgment Entry Attached to Appendix "D" at pg. 3). More over, Johnson's notes states that the dark brown coat recovered from Appellant's car belonged to him; and, that Appellant had nothing to do with what he was doing.

In addition, Salahuddin's notes explain that he and Appellant did not know Johnson, they merely offered him a ride. More important, Salahuddin notes reveals that he (Salahuddin) was the one who made the statement that Johnson offered Appellant \$200 "to drive him around letting him out when he wants out". This too is a crucial point, because, during trial Officer Middendorf testified that Appellant was the one who made the statement that "he was just a gypsy cab driver and that they (Johnson, Salahuddin) were going to pay him \$200.00 to take them up to Delhi. In the Brief of Plaintiff-Appellee, the prosecutor used Officer's Middendorf testimony about who made

this statement in his argument. This court affirmed Appellant's conviction on the basis that he made this statement, when in fact it was Johnson. (See, Appendix D). Appellant never knew the contents of these notes until the trial was well over.

Despite Officer Middendorf's interrogation notes, the trial court ruled that Appellant had supplied no evidentiary documents to support his claims of prosecutorial misconduct and newly discovered evidence, and thus denied his petition without the benefit of any sort of hearing. (See, Appendix "C").

#### ARGUMENT

THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT  
AND ABUSED ITS DISCRETION BY DISMISSING APPELLANT'S  
PETITION FOR POST-CONVICTION RELIEF WITHOUT  
AN EVIDENTIARY HEARING ON APPELLANT'S CLAIMS.

#### Issue Presented For review

Whether an evidentiary hearing is mandated on  
Petition for Post-Conviction Relief filed  
pursuant to R.C. 2953.21 to 2953.23 when the  
Petitioner has met his burden by submitting  
supporting affidavit(s) or other documentary  
evidence indicating that his conviction is  
void or voidable on constitutional grounds.

An evidentiary hearing is mandated on a Petition for Post-Conviction relief pursuant to R.C. 2953.21 when supporting affidavits(s) or other documentary evidence are filed with the petition setting forth substantive grounds for relief. State v. Jackson (1980), 64 Ohio St.2d 107, 413 N.E.2d 819. The Jackson Court stated as follows:

"The statutory framework for determining whether a hearing is necessary for post conviction actions is set forth in R.C. 2953.21 . . . (A) Any person

convicted of a criminal offense or a judge delinquent claiming that there was such denial or infringement of his rights as to render the judgment void, or voidable under the Ohio Constitution or the Constitution of the United States, may file petition at any time in the court which imposes sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief. The petitioner may file such supporting affidavit and other documentary evidence as will support his claim for relief. . (C) Before granting a hearing the court shall determine whether there are substantive grounds for relief. In making such a determination, the court shall consider, in addition to the petition and supporting affidavits all files and records pertaining to the proceedings against petitioner, including, but not limited to the indictment, the court's journal entries, the journalized records of the clerk of courts, and the court reporter transcript. . . (E) unless the petition and the files and records of the case show petitioner is not entitled to relief, the court shall proceed to a prompt hearing on the issues, hold the hearing, and make a file written findings of fact and conclusions of law upon entering judgment." id. at 109, 413 N.E.2d at 821.

Further, the Ohio Supreme Court has held that R.C. 2953.21 requires the trial court to consider the allegation of the petition for post-conviction relief and the particular facts upon which petitioner bases his claim in determining whether there are sufficient grounds for a hearing. Id. at 110, 413 N.E.2d at 822.

In this case, it is clear that the trial court did not review the record and Appellant's filing, including the interrogation notes filed by Appellant and attached to his Petition, but merely put on a standard order dismissing the Petition. The trial court's entry reads as follows:

1. Defendant's claim could have been raised at trial sentence, or on appeal, and are therefore barred by res judicata.

2. Defendant's claim is not supported by evidentiary documents as required by State v. Pankey.
3. Claims based on newly discovered evidence are not justifiable in post conviction action.

Before a hearing is granted, the Petitioner bears the initial burden in a post-conviction proceeding to submit evidentiary documents containing sufficient operative facts to demonstrate a substantive ground for relief. *State v. Jackson*, supra at 111, 413 N.E.2d at 882. The Jackson Court stated that the Court's pivotal concern should be whether there are substantive grounds for relief which would warrant a hearing based upon the petition, the supporting affidavit(s) and the files and records of the case. *Id.* at 110, 413 N.E.2d 822.

Since it is clear that Petitioner/Appellant met his initial burden to present evidence under R.C. 2953.21 et. seq. to warrant a hearing, the critical question then become whether or not a claim of prosecutorial misconduct based upon newly discovered evidence is justifiable in post conviction action.

Paragraph 3 of judge Martin's Finding of Facts, Conclusion of Law and Entry Denying Relief held:

"Claims based on newly discovered evidence are no justifiable in post conviction action."

Criminal Rule 33(A) limits the use of newly discovered evidence to evidence that defendant "could not with reasonable diligence have discovered and produced at trial." The trial record in this case clearly demonstrates that Appellant was

prevented by the prosecutor and the trial court from discovery. Appellant maintained throughout his entire trial that co-defendant Johnson's tape-recorded confession contained information that could exonerated him. At the beginning of the trial Appellant filed for discovery requesting the recorded confession and any written statement that Co-defendant Johnson had made. The prosecution failed to disclose this evidence. During the course of the trial, Appellant made a request to Judge Martin to have Johnson appear in court as a witnesses for him. However, Johnson invoked his 5th Amendment right. Appellant next sought Johnson's tape-recorded confession be played in court. Again, Appellant was denied. It was not until well after the trial and while Appellant was incarcerated at the Lebanon Correctional Institution did Appellant finally obtained copies of Johnson's and Salahuddin's written interrogation statements.

In this case, the newly discovered evidence is entirely outside the record, and post-conviction is the appropriate vehicle for evidence dehors the record. Appellant further contends not only is post-conviction the appropriate vehicle, but when claims are based on facts outside the record, a hearing is mandated so the trial court can determine the sufficiency of the evidence. State v. Milanovich (1975), 42 Ohio St.2d 46, 325 N.E.2d 540; State v. Legree (1988), 61 Ohio App. 3d 394 568, 573 N.E. 2d 687; State v. Ramos (1993), 88 Ohio App. 3d 394, 623 N.E. 1336.

In State v. Milanovich, supra, the Court stated in paragraph 1 of its syllabus as follows:

"Where a claim raised by a petition for post-conviction relief under R.C. 2953.21 is sufficient on its face to raise an issue that petitioner's conviction is void or voidable on constitutional grounds, and the claim is one which depends upon factual allegations that cannot be determined by examination of the files and records of the case, the petition states a substantive ground for relief." Id. 49; see also, State v. Legree, (19880 61 Ohio App. 3d 568, 575, 573 N.E. 2d 687, 692; State v. Ramos, (1993) 88 Ohio App. 3d 394, 623 N.E. 2d 1336, 1337.

Therefore, Appellant's petition stated a substantive ground for relief which required a hearing. The trial court could have easily held a hearing so that it could have reviewed the evidence, particularly the written notes of co-defendants, before ruling on the sufficiency of Appellant's claims.

As the Court will note, Appellant offered evidence, that if believed, would establish that his conviction is void or voidable on constitutional grounds. In the present case, Appellant Petition is supported by the interrogation notes of co-defendants, who contradict the State's theory that Appellant acted in concert with them in several burglaries. A hearing was absolutely mandated to insure that Appellant's constitutional rights were protected and that his conviction was constitutionally sound. In light of these circumstances, Judge Martin's failure to hold an evidentiary hearing was in error.



Although the petitioner does not have to carry the burden of proving his claim in his pleading and attachments, Officer Middendorf's interrogations notes of co-defendant Johnson and Salahuddin raises serious concerns about the prosecutor's conduct and the impact his conduct had on the trial and the direct appeal. The prosecution's whole case rested on Officer Middendorf's testimony that Appellant made a statement to him that he, Appellant, "was just a gypsy cab driver and that they (Johnson, Salahuddin) were going to pay him \$200.00 to take them up to Dehli." This testimony was used by the prosecution to establish that Appellant acting in complicity with the co-defendants. However, the interrogation notes of Salahuddin says it was Johnson who made this statement, not Appellant. More important, the prosecution argued that the stolen watches were recovered from Appellant's car. However, the interrogation notes from co-defendant Johnson reveals that the watches were recovered from him. The prosecutor knew his facts were not true, he prosecuted all three cases. Yet, he advanced this theory at trial, and it would appear that this formed the basis for the jury's verdict and this Court's Judgment Entry since it adopted and followed the brief of Plaintiff-Appellee.

Appellant argues that any irregularities in the proceedings that prevent a fair trial is sufficient grounds for a new trial. Misconduct by the prosecuting attorney that substantially affects the rights of the defendant is grounds for a new trial. A prosecuting attorney who suppresses evidence or who fails to

disclose relevant evidence material to guilt or innocence is guilty of misconduct requiring a new trial. See, *Brady v. Maryland*, 373 U.S. 83, 86, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963).

In *State v. Walden* (1984), 19 Ohio App. 3d 141, Walden claimed that the prosecutor had withheld exculpatory evidence which contributed to her conviction at trial for causing the death of a man she claimed had earlier harassed her. Walden testified that she had complained to the police about the harassment, then discovered after trial undisclosed police documents corroborating her testimony. The court concluded that Walden's petition raised the issue of prosecutorial misconduct with enough specificity to require an evidentiary hearing under R.C. 2953.21. *Id.*, at 48.

Walden's analysis of the prejudicial impact of the absence of the police records parallels the prejudicial impact of the non-disclosure here in this case. Appellant requested the prosecutor to disclose the tape-recorded confession of co-defendant Johnson because it had on it information helpful to his defense. The prosecutor failed to disclosed this evidence, using only parts of Johnson's confession that supported his complicity theory. There is no question that it was incumbent upon the prosecutor to disclose favorable evidence under Criminal Rule 16(B)(1)(a), *Brady v. Maryland*, *supra*.

CONCLUSION

The trial court erred to the prejudice of Appellant and abused its discretion by dismissing Appellant's Petition to Vacate pursuant to R.C. 2953.21 without conducting an evidentiary hearing on Appellant's claims. The trial court's ruling should be reversed and the case should be remanded for an evidentiary hearing on Appellant's Petition, and an order issuing co-defendant Johnson's tape-recorded confession played at this hearing to corroborate the evidence already attached herewith.

Respectfully submitted,

*Richard Bohannon*

Richard Bohannon, pro se  
P.O. Box 5500  
Chillicothe, Ohio 45601-0990

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Brief of Petitioner/Appellant on the Respondent/Appellee by mailing such to Michael K. Allen, Prosecuting Attorney, 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202, this 14th day of October, 2004 by placing such in the prison's mail system.

A handwritten signature in cursive script that reads "Richard Bohannon".

Richard Bohannon

# IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

STATE OF OHIO,

APPEAL NO. C-990386

TRIAL NO. B-9808141(A)

Plaintiff-Appellee,

*JUDGMENT ENTRY.*

VS.

RICHARD BOHANNON,

Defendant-Appellant.

This appeal, considered on the accelerated calendar under App.R. 11.1(E) and Loc.R. 12, is not controlling authority except as provided in S.Ct.R.Rep.Op. 2(G)(1).

Defendant-appellant, Richard Bohannon, was tried by a jury, found guilty, and convicted for burglary, misuse of a credit card, and receiving stolen property. Bohannon claims that his conviction violated his right to confront witnesses and was against the manifest weight and sufficiency of the evidence. Bohannon also claims that he was denied effective assistance of counsel. We disagree.

The Confrontation Clause ensures that no one will be convicted without being given the opportunity to confront and cross-examine witnesses at trial. *State v. Gilliam* (1994), 70 Ohio St.3d 17, 635 N.E.2d 1242, citing *Lee v. Illinois* (1986), 476 U.S. 530, 106 S.Ct. 2056. When the state seeks to introduce a nontestifying accomplice's statement, it no longer may be admitted as evidence of guilt of the defendant if it falls within a firmly rooted hearsay exception. See *State v. Madrigal* (2000), 87 Ohio St.3d 378, 386, 721 N.E.2d 52, 62, overruling the contrary holding in *State v.*

*Gilliam, supra*. To overcome a violation of the Confrontation Clause, the statement must bear adequate indicia of reliability or be supported by a particularized guarantee of trustworthiness. See *Madrigal* at 386, 721 N.E.2d at 62; see, also, *Lilly v. Virginia* (1999), 527 U.S. 116, 119 S.Ct. 1887. But even if such a statement is erroneously admitted, this court need not reverse the conviction if the admission of the statement is harmless. See *Lilly, supra; Madrigal, supra*.

In this case, we hold that Bohannon's Confrontation Clause rights were violated because, pursuant to *Lilly*, a nontestifying accomplice's statement that tends to shift blame to others is inherently unreliable and does not bear adequate indicia of reliability. See *Lilly, supra; Madrigal, supra*. Despite this, we hold – based upon the overwhelming evidence of guilt aside from the erroneously admitted statement, including Bohannon's incriminating statement made to the arresting officer – that the admission of the nontestifying accomplice's statement was harmless. See *Chapman v. California* (1967), 386 U.S. 18, 87 S.Ct. 824; *Delaware v. Van Arsdall* (1986), 475 U.S. 673, 106 S.Ct. 1431; *Schneble v. Florida* (1972), 405 U.S. 427, 92 S.Ct. 1056; *Madrigal, supra*. Therefore, we overrule Bohannon's first assignment of error.

Bohannon claims, in his second assignment of error, that he was denied effective assistance of counsel. In order to demonstrate ineffective assistance of counsel, Bohannon must show that, but for counsel's unprofessional errors, the outcome of the trial would have been different. See *State v. Stojetz* (1999), 84 Ohio St.3d 452, 705 N.E.2d 329, citing *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052. Bohannon cites as ineffective assistance his counsel's failure to call a witness who may have been able to impeach the credibility of the erroneously admitted statement of the nontestifying accomplice. Bohannon and his counsel discussed this issue at length on the record. The court asked Bohannon whom he wanted to call as witnesses in addition to those listed on the defense witness list. Bohannon stated that there were two individuals who would testify that Bohannon's accomplices knew one another. The state stipulated to the testimony of Bohannon's proposed witnesses, and the case proceeded without further objection from Bohannon. We hold that Bohannon has failed to demonstrate that counsel's actions were ineffective. We, therefore, overrule Bohannon's second assignment of error.

In Bohannon's third assignment of error, he claims that his conviction was contrary to the manifest weight of the evidence and was based upon insufficient evidence. Sufficiency and weight of the evidence are separate concepts that may lead to different results. If a conviction is not based upon sufficient evidence, then the defendant must be set free because the state has not met its burden to produce evidence to satisfy each and every element of the charged offense. See *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. Conversely, if the conviction is contrary to the manifest weight of the evidence, then the defendant is entitled to a new trial because, although there is sufficient evidence to meet the elements of the charged offense, the burden of persuasion to support a conviction beyond a reasonable doubt has not been met. See *id.* If we determine that there is substantial evidence to support all of the elements of the charged offense and that the evidence is sufficiently probative of guilt, we will not reverse on either the sufficiency or the weight of the evidence. See *State v. Barnes* (1986), 25 Ohio St.3d 203, 495 N.E.2d 922; *Thompkins, supra*.

The record in this case demonstrates that Bohannon, by his own admission, was the driver of a vehicle that carried two other individuals, one of whom burglarized two locations. Evidence was presented that tied Bohannon's car to one of the burglaries via his license-plate number. Additionally, witnesses testified that they recognized Bohannon's coat, which had been worn by the accomplice who committed the burglary. Thus, based upon complicity liability, Bohannon was guilty of burglary. As to the offense of misuse of a credit card, Bohannon's license-plate number was tied to

the purchase of gasoline and other merchandise. Finally, the police recovered stolen watches from Bohannon's car. Testimony was presented that the watches belonged to one of the victims. Thus, the charge of receiving stolen property was properly supported by the evidence. Based upon the overwhelming evidence of guilt – aside from the erroneously admitted statement of the nontestifying accomplice – we hold both that there was substantial evidence to satisfy the elements of the charged offenses, and that the evidence was sufficiently probative of guilt beyond a reasonable doubt. Therefore, we overrule Bohannon's third assignment of error.

Having overruled all of Bohannon's assignments of error, we affirm the judgment of the trial court.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**Hildebrandt, P.J., Sundermann and Winkler, JJ.**

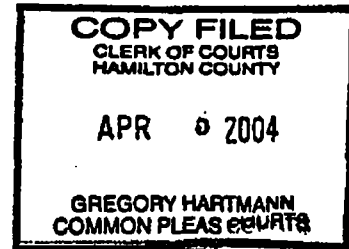
*To the Clerk:*

Enter upon the Journal of the Court on March 1, 2000

per order of the Court \_\_\_\_\_

Presiding Judge

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO



STATE OF OHIO,

Plaintiff-Respondent,

-vs-

RICHARD BOHANNON,

Defendant-Petitioner.

:

:

:

:

:

CASE NO. B-9808141 (A)

JUDGE MARTIN

REQUEST FOR EVIDENTIARY HEARING

PETITION TO VACATE OR SET ASIDE JUDGMENT OF  
CONVICTION OR SENTENCE

Petitioner, Richard Bohannon, petitions this Court for post-conviction relief pursuant to Ohio Revised Code 2953.21, for the following reasons:

1. Petitioner was indicted for Aggravated Burglary, Burglary, Misuse of Credit Cards, and Complicity.
2. Petitioner was convicted of Burglary, Misuse of Credit Cards, and Complicity, in a judgment entered on May 20, 1999.
3. Petitioner was tried by a Jury.
4. Petitioner was given a sentence of 15 1/2 years of incarceration.
5. Petitioner did appeal from the judgment of conviction to the First Appellate District Court of Appeals, the Court of appeals rendered and affirmed the trial Court decision on March 1, 2000.
6. Petitioner appealed the decision of the First Appellate District Court of Appeals to the Ohio Supreme Court of Ohio, resulting in its dismissal on July 12, 2000, with written opinion.
7. Petitioner suffered a denial or infringement of Petitioner's rights sufficient to rendered the judgment of conviction void or voidable under the Ohio Constitution and/or the Constitution of the United States.
8. The Constitutional errors that entitled Petitioner to relief are not included in the record and could not have been raised on appeal.



CLAIM NUMBER ONE


- 9a. STATEMENT OF CONSTITUTIONAL CLAIM: Newly Discovered Evidence.
- 9b. STATEMENT OF FACTS SUPPORTING CLAIM: The Prosecution withheld Exculpatory Evidence (INTERVIEW "TAPE" CONFESSION OF ALLEGED CO-DEFENDANT(s) STATEMENTS) exonerating Petitioner of any involvement and/or complicity to the case at hand.
- 9c. The following evidence and/or affidavit are not attached because Petitioner needs the assistance of an attorney to produce the evidence.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests:

- A. That this Court adopt the Recommendation of the United States District Court;
- B. That Petitioner be granted an evidentiary hearing on the above claim;
- C. That Petitioner's conviction be vacated or set aside; and/or
- D. That Petitioner be granted such other relief as the Court deems appropriate.

Respectfully submitted,

  
Richard Bohannon #374-617  
Lebanon Correctional Institution  
P.O. Box 56  
Lebanon, Ohio 45036

DEFENDANT-PETITIONER, pro se

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing MOTION FOR APPOINTMENT OF COUNSEL was sent by regular U.S. mail to the Office of the Hamilton County Prosecutor, at 230 East Ninth Street, Cincinnati, Ohio 45202, this 24 day of March, 2004.



DEFENDANT-PETITIONER, pro se

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

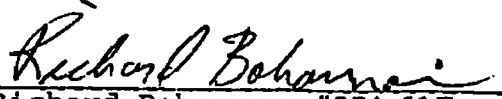
STATE OF OHIO, :  
Plaintiff-Respondent, :  
-vs- : CASE NO. B-9808141 (A)  
RICHARD BOHANNON, :  
Defendant-Petitioner. :

MOTION FOR APPOINTMENT OF COUNSEL.

Petitioner moves this Court for an order appointing counsel  
to represent petitioner on the Petition for Post-Conviction Relief.

A memorandum in support is attached.

Respectfully submitted,

  
Richard Bohannon #374-617  
Lebanon Correctional Institution  
P.O. Box 56  
Lebanon, Ohio 45036

PETITIONER, pro se

MEMORANDUM IN SUPPORT

Petitioner lacks the skill or knowledge to adequately pursue Petitioner's rights without the assistance of counsel. Counsel is essential to insure that Petitioner's rights are fully litigated and all issues reviewed. Pursuant to Ohio Revised Code §2953.21, Petitioner has only one opportunity to present his claim for post-conviction relief.

Counsel is required to protect Petitioner's constitutional rights.

As attested by the Affidavit of Indigency filed with the Petition, Petitioner is without funds to hire an attorney.

The following special circumstances about Petitioner and/or Petitioner's case further support this request: The State's Prosecuting Attorney in this case withheld "Exculpatory Evidence", which would have exonerated Petitioner of any involvement in the above-styled case, which stated by the alleged co-defendant(s); "that the Petitioner had nothing to do with the case at present," however, this evidence was kept from the trial which violated Petitioner's rights to have any and all evidence favorable to the Petitioner.

WHEREFORE, Petitioner respectfully requests that counsel be appointed.

Respectfully submitted,

Richard Bohannon  
PETITIONER, pro se

IN THE COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

STATE OF OHIO, :  
Plaintiff-Respondent, :  
-vs- : CASE NO. B-9808141 (A)  
RICHARD BOHANNON, :  
Defendant-Petitioner. :

AFFIDAVIT OF INDIGENCY

I, Richard Bohannon, do hereby solemnly swear that I have presently this 24th day of March, 2004, no means of financial support and no assets of any value and, therefore, cannot afford to pay for any legal services, fees or costs in the above-styled case.

Richard Bohannon  
DEFENDANT-PETITIONER, pro se

Lebanon Correctional Institution  
P.O. Box 56  
Lebanon, Ohio 45036

SWORN TO AND SUBSCRIBED IN MY PRESENCE THIS 24th DAY OF MARCH, 2004.

Billy Dee Bailey  
NOTARY PUBLIC

BILLY DEE BAILEY  
Notary Public, State of Ohio  
My Commission Expires Mar. 27, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing MOTION FOR APPOINTMENT OF COUNSEL was sent by regular U.S. mail to the Office of the Hamilton County Prosecutor, at 230 East Ninth Street, Cincinnati, Ohio 45202, this 24 day of March, 2004.

*Richard J. Bohannon*

DEFENDANT-PETITIONER, pro se

*Defendant Salahuddin made the following statements:*

"Look man. I don't want no trouble, I got a gun!"

"What I do?"

I read Abdula his rights and asked his questions about the gun and the broadcast about the car and occupants we were looking for. He stated that he needed the gun for protection because he's been in prison before. I asked him what he was in prison for and he stated "This same thing!" and I asked "Breaking into Nuns houses?" and he stated "No, CCW I can't go back to prison I got a wife and kids."

I asked Abdula if he knew the balding male black, Charles Johnson who was leaving the store. Abdula stated "No, I never saw that man before."

THE SUSPECT THEN STATED THAT HE DID HAVE A GUN IN HIS LEFT WAIST BAND BUT IT WAS FOR HIS PROTECTION.

Abdullah had the same line that he was looking for clothing shops in Delhi when his car breaks down and he parks at Mt. St. Joe. He gets Richard to pick him up and go get his car. They go into Delhi and meet Charles Johnson walking up Delhi Rd at McDonalds. He gets to the Mount and can't find his car so he goes inside to call home to see if his wife got the car.

He then states that Richard and he picked up Charles on the Kentucky side and that they don't have any idea who he is so he doesn't want to say too much because Charles could be dangerous. He stated that Charles Johnson told them that he would give them \$200.00 to drive him around letting him out when he wants out. They were at St. Dominic's where they let Charles out for about an hour then went to Mt. St. Joseph's. Abdullah states that he carries a gun because he is the enforcer at his Muslim Church and that they have had trouble with drug dealers that he has run off the church property.

He stayed with his story of

not knowing who Charles Johnson was.

Charles Johnson

332 - E - 3701

*Defendant Johnson made the following oral statement:*

His name was Charles Johnson and he stated he lived in Covington.

He stated that he had taken the bus from Covington to Delhi to meet a friend. The friend lived on Vine St. downtown.

He had a Seiko and an Elgin watch. He stated they belonged to his wife, but then he corrected himself, his girlfriend.

Charles said his tan coat matched his tan hat. A dark brown leather coat was removed from the suspect vehicle. Abdullah already had a coat on. I asked him if the coat was his, and he said no.

Charles later admitted the dark coat was his, and that the tan coat belonged to Butch Bohannon.

Charles Johnson was giving false information to elude FBI warrants under his true identity of Matthew Travitt, FBI# 820092C.

When I interviewed Charles Johnson he still maintained that this was his real name. He wanted a lawyer and had nothing to say to us. He stated that he has no idea who the other two guys are and that they had nothing to do with what he was doing.

Charles Johnson

832-15-3701



**THE STATE OF OHIO, HAMILTON COUNTY**  
**COURT OF COMMON PLEAS**  
**CRIMINAL DIVISION**

<b>STATE OF OHIO</b>  Plaintiff  vs.  <b>RICHARD BOHANNON</b>  Defendant	:  :  :  :  :	<b>NO. B-9808141(A)</b>  (Judge Martin)  <u><b>FINDINGS OF FACT,</b></u> <u><b>CONCLUSIONS OF LAW,</b></u> <u><b>ENTRY DENYING PETITION TO</b></u> <u><b>VACATE</b></u>
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This matter is before the Court on the petition to vacate filed by the defendant, the response filed by the State, and the entire record in this matter. The Court determines that all questions raised can be resolved from the existing record, therefore, no evidentiary hearing will be held.

The Court makes the following Findings of Fact:

1. Defendant claims prosecutorial misconduct and newly discovered evidence.
2. Defendant's claims are based on matters in the record.

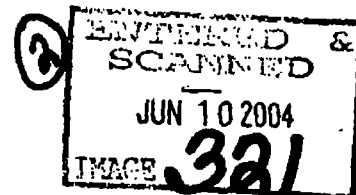
Based upon the above Findings of Fact the Court makes the following Conclusions of Law:

1. Defendant's claim could have been raised at trial, sentence, or on appeal, and are therefore barred by res judicata.<sup>1</sup>
2. Defendant's claim is not supported by evidentiary documents as required by State v. Pankey<sup>2</sup>.

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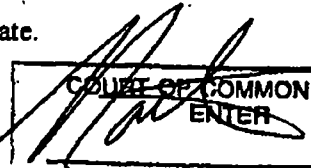
<sup>1</sup> State v. Perry (1967), 10 Ohio St.2d 175.

<sup>2</sup> (1981), 68 Ohio St.2d 58, 428 N.E.2d 413



3. Claims based on newly discovered evidence are not justifiable in a post conviction action.<sup>3</sup>

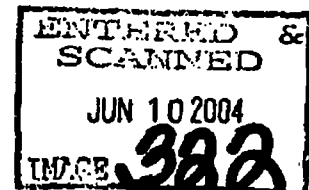
Based upon the above Findings of Fact and Conclusions of Law, and pursuant to R.C. 2953.21(C), the Court hereby dismisses the petition to vacate.

  
COURT OF COMMON PLEAS  
ENTER  
HON. STEVEN E. MARTIN  
Steven E. Martin  
THE CLERK SHALL SERVE NOTICE  
Judge, Court of Common Pleas  
JUL 13 2004  
COURT REPORTER

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<sup>3</sup> State v. Clay (March 8, 1983), Hamilton App. No. C-820434, unreported.